A

RAJESH TALWAR AND ANOTHER

v.

CENTRAL BUREAU OF INVESTIGATION AND ANOTHER

B

SUPREME COURT, INDIA
(2014) 1 SUPREME COURT CASES 628
DR B S CHAUHAN J
S A BOBDE J
C [SLP (CRL) NO: 7966 OF 2013†]
8 OCTOBER 2013

CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 - S. 233(3) r/w S. 91 and S. 482 - Application by accused for production* D *of certain documents (i.e. reports as to narco-analysis test, brain-mapping test, etc. conducted on certain persons) - Moved at the stage of final hearing merely to delay the trial proceedings - Rejection of such application by High Court - Held on facts, was proper - Did not warrant any interference by Supreme Court*

E

During the trial proceedings of the well-known *Aarushi Talwar* murder case, where the parents were being tried for the murder of their daughter, the said accused parents moved an application under Section 233 read with Section 91 of the Criminal Procedure Code, 1973 for production of the reports of certain scientific tests F (ie, narco-analysis test, brain-mapping test, polygraph test, etc.) conducted on three persons who at one time were suspected accused in the instant case and had been in police custody. It was submitted that the said reports were essential for the defence as they contained exculpatory statements favouring the present G accused and it was only upon examination of the said reports by the trial court that the present accused would be able to put up their plea that the crime, in fact, might have been committed by the said three persons. On getting no relief from the trial court, the accused approached the High Court. The High Court rejected H the said prayer on the ground that the said application was vexatious and intended to delay the proceedings. Aggrieved thereby, the accused had preferred the present special leave petition.

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† From the Judgment and Order dated 19-7-2013 of the High Court of Judicature of Allahabad in Application No. 20215 of 2013 under Section 482 CrPC

Dismissing the special leave petition, the Supreme Court

Held:

The criminal courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence and in fact, are bound in terms of Section 233(3) CrPC to refuse such request if it appears that they are made in order to vex the proceedings or delay the same. (Para 9)

The petitioner-accused took 4 months to produce seven DWs after the closing of the statement under Section 313 CrPC. On 25-9-2013 the case was fixed for final arguments, but the accused moved an application under Section 233 CrPC. As per the High Court, even the initial applications were made at a stage where the prosecution evidence had been concluded and the defence had entered and almost concluded its evidence. In fact, the petitioners had, without raising any objection that the reports and documents allegedly proved by the witnesses have not been supplied to them or made part of the Court record, participated in the examination and cross-examination of two witnesses. (Paras 10 and 9)

That apart, the impugned order of the High Court was passed on 19-7-2013. The instant petition was filed after about two months. There is no reason why the petitioners ought to have waited from 19-7-2013 to 17-9-2013 to approach the Supreme Court and allowed the trial to proceed even further. (Paras 9 and 12)

It is thus evident that the petitioners have been adopting dilatory tactics on every moment. In view of the above, the facts and circumstances of the case do not warrant any interference by the Supreme Court. The special leave petition is accordingly dismissed. (Paras 12 and 13)

Selvi J. Jayalalithaa v. State of Karnataka, (2014) 2 SCC 401, relied on

Rajesh Talwar v. CBI, Application No. 20215 of 2013 under Section 482 CrPC, decided on 19-7-2013 (All), affirmed

Selvi v. State of Karnataka, (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1, cited

Triveniben v. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248, cited

Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8, cited

A *Amarinder Singh v. Parkash Singh Badal*, (2009) 6 SCC 260 : (2009) 2 SCC (Cri) 971, cited

Mohd. Hussain v. State (Govt. of NCT of Delhi), (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919, cited

Natasha Singh v. CBI, (2013) 5 SCC 741, cited

B

W-D/52449/CR

Advocates who appeared in this case:

For the petitioners - U.U. Lalit, Senior Advocate (Sandeep Kapur, Shivek Trehan, Ms Niharika Karanjawala and Ms Manik Karanjawala (for
C *M/s Karanjawala & Co.), Advocates)*

For the respondents - Sidharth Luthra, Additional Solicitor General (Rajiv Nanda, Ms Padma Lakshmi Nigam, Pramod Kr Dubey, Ms Supriya Juneja, B.V. Balaram Das, Ms Anandana Handa, Shiv Pande and Hemant Shah, Advocates)

D **Chronological list of cases cited:**

(2014) 2 SCC 401, Selvi J. Jayalalithaa v. State of Karnataka (2013) 5 SCC 741, Natasha Singh v. CBI

Application No. 20215 of 2013 under Section 482 CrPC, decided on 19-7-2013 (All), Rajesh Talwar v. CBI

E *(2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919, Mohd. Hussain v. State (Govt. of NCT of Delhi)*

(2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1, Selvi v. State of Karnataka

(2009) 6 SCC 260 : (2009) 2 SCC (Cri) 971, Amarinder Singh v. Parkash Singh Badal

F *(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8, Zahira Habibullah Sheikh (5) v. State of Gujarat*

(1989) 1 SCC 678 : 1989 SCC (Cri) 248, Triveniben v. State of Gujarat

G

JUDGMENT

S A Bobde J:

[1] This special leave petition has been preferred against the
H impugned judgment dated 19-7-2013, passed by the High Court of Judicature of Allahabad in *Rajesh Talwar v. CBI*[1] whereby the petitioners' prayer for documents pertaining to scientific tests made in their Application No. 405/Kha dated 11-6-2013 filed under Section 233 of the Code of Criminal Procedure, 1973 (hereinafter
I referred to as "CrPC") read with Section 91 was rejected.

1. Application No. 20215 of 2013 under Section 482 CrPC, decided on 19-7-2013 (All)

[2] The petitioners are being tried for charges of committing the murder of their daughter Arushi and their domestic helper Hemraj in their house. At the initial stage, the investigation was conducted by U.P. Police, however, it was later transferred to the Central Bureau of Investigation (hereinafter referred to as "CBI"). A closure report was submitted before the Magistrate who disagreed with it and has issued the process to the petitioners for the charge of committing the double murder.

[3] The present stage of the trial is that the evidence of the prosecution is closed and the statements of the accused are being recorded under Section 313 CrPC. The application in question under Section 311 for examining seven other left over witnesses was moved at this stage. Along with this application, another application under Section 233 CrPC read with Section 91 has been moved on 11-6-2013, in respect of the reports of certain tests conducted on three persons who at one time were suspected accused and had been in police custody, namely, Krishna, Raj Kumar and Vijay Mandal. By this application, the petitioners sought the following reports:

(i) Narco-analysis test reports and CD of Krishna conducted at FSL Bangalore;

(ii) Narco-analysis test reports and CD of Raj Kumar conducted at FSL Bangalore;

(iii) Narco-analysis test reports and CD of Vijay Mandal conducted at FSL Bangalore;

(iv) Brain-mapping test report of Raj Kumar conducted at FSL Gandhinagar;

(v) Brain-mapping test report of Krishna conducted at Bangalore;

(vi) Brain-mapping test report of Vijay Mandal conducted at Bangalore;

(vii) Lie detector, polygraph test reports of Krishna, Raj Kumar and Vijay Mandal conducted at CFSL New Delhi, FSL Bangalore, FSL Gandhinagar;

(viii) Psychological analysis test reports of Krishna, Raj Kumar and Vijay Mandal conducted at AIIMS, FSL Bangalore, FSL Gandhinagar.

A (ix) The narco-analysis test, brain-mapping test, polygraph test and the psychological test reports done at AIIMS, CFSL New Delhi and at FSL Gandhinagar of the accused Dr Rajesh Talwar and Mrs Nupur Talwar.

B (x) The written opinion/report and its annexures and other related documents dated 31-7-2008 of the post-mortem doctors i.e. Dr Sunil Dohre and Dr Naresh Raj regarding inspection and examination of the then murder weapon (khukhri) sent to them by CBI.

C In addition, the applicants also asked for call records, material forming the basis of the report prepared by PW 6 and the sound simulation test reports.

[4] These applications were disposed of by the trial court by D order dated 18-6-2013 allowing them partly.

[5] Before the High Court, it was contended by the petitioners that the said reports are essential for the defence since they pertain to those persons who were at one time suspected as being E responsible for the offence and contain exculpatory statements favouring the petitioners. According to the petitioners, it is only upon examination of the reports by the Court that the petitioners will be able to put up their plea that the crime, in fact, may have been committed by Krishna, Raj Kumar and Vijay Mandal who F were earlier suspected of the offence and had been interrogated. The High Court *inter alia* rejected the petitioners' prayer on the ground that the application is vexatious and intended to only delay the proceedings as was also found by the trial court.

G **[6]** Before us, Shri U.U. Lalit, learned Senior Counsel for the petitioners submitted that the production of the reports pertaining to the abovenamed three persons is absolutely essential and relying on Section 91 CrPC, submitted that the production of these reports being relevant, the prayer ought to have been allowed by the High Court. According to Shri Lalit, the reports, if H produced, would not breach either Article 21 read with Article 20(3) which protects the accused from self-incrimination and/or would not be hit by Section 21 of the Evidence Act since the persons in respect of whom those reports have been prepared are not accused anymore. In any case, according to the learned I counsel, the reason given by the High Court that such reports

having been prepared on the basis of statements and data collected in contravention of Article 20 are premature and this could only have been found after the reports were produced in courts.

[7] Shri Sidharth Luthra, learned ASG vehemently opposed the prayer and submitted that the production of these reports is pointless in view of the law laid down by this Court in *Selvi v. State of Karnataka*[2], wherein such reports are held to be inadmissible in evidence. The learned ASG further submitted that the timing of the application and the stage at which it was made clearly shows that the applications are vexatious and intended to delay the proceedings which are at a concluding stage. In support of his contention, Shri Luthra relied on the sequence of events which according to him show that the petitioners have at every stage tried to delay the proceedings by making one application after the other. The learned counsel further submitted that even the present special leave petition is delayed in view of the fact that it is preferred on the file on 18-9-2013 against the judgment of the Allahabad High Court which was passed on 19-7-2013[1]. The order of the trial court was, in fact, passed on 18-6-2013.

[8] Shri Lalit, learned Senior Counsel for the petitioners submitted that the petitioners have been occupied in the trial and could not challenge the order of the High Court earlier.

[9] After considering the rival submissions on this point, we find no merit in the contention on behalf of the petitioners that they could not have approached this Court earlier. There is no reason why the petitioners ought to have waited from 19-7-2013 to 17-9-2013 to approach this Court and allowed the trial to proceed even further. We make this observation in the background of the observation of the High Court that even the initial applications were made at a stage where the prosecution evidence had been concluded and the defence had entered and almost concluded its evidence. In fact, the petitioners had, without raising any objection that the reports and documents allegedly proved by the witnesses have not been supplied to them or made part of the Court record, participated in the examination and cross-examination of two witnesses. We might note that criminal courts are not obliged to accede to the request made by any party to entertain and allow

2. (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1

1. *Rajesh Talwar v. CBI*, Application No. 20215 of 2013 under Section 482 CrPC, decided on 19 7-2013 (All)

A application for additional evidence and in fact, are bound in terms of Section 233(3) CrPC to refuse such request if it appears that they are made in order to vex the proceedings or delay the same. It is also pertinent to mention here that the learned trial Judge who has been conducting the trial is likely to retire very soon.

B

[10] The relevant part of the trial court proceedings as well as the trial court's orders thereto are given as under:

(a) The accused filed application dated 22-7-2013 in the trial court for adjournment to produce their defence witness. They
C moved application dated 6-8-2013 in the trial court for direction to CBI to produce document, tabulated chart, etc.

(b) The trial court passed order dated 12-8-2013 rejecting the application for supplying of tabular charts.

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(c) The accused moved application dated 2-9-2013 in the trial court to call PW 6 Dr B.K. Mahapatra, CFSL, Bio Division, to file an affidavit.

(d) The trial court passed order dated 3-9-2013 rejecting the
E prayer to call upon Dr B.K. Mahapatra to file affidavit.

(e) The trial court passed order dated 3-9-2013 directing the accused to produce the defence witnesses from foreign country on the next date or through videoconferencing.

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(f) The accused moved application dated 7-9-2013 for adjournment to produce defence witness from foreign country.

(g) The accused moved application dated 12-9-2013 in the trial court for exhibiting documents.
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(h) The accused moved application to recall Dr B.K. Mahapatra for his further cross-examination.

(i) DW 7 examined.

H

(j) The accused filed another application for re-examination of DW 7 (Dr Andrei Semikhodskii).

(k) The trial court dismissed the aforesaid application for re-examination of Dr B.K. Mahapatra *and posted the case for final arguments i.e. stage of Section 233 CrPC is crossed.*
I

It may be pertinent to note that the petitioners took 4 months to produce seven DWs after the closing of the statement under Section 313 CrPC. On 25-9-2013 the case was fixed for final arguments but the accused moved applications under Section 233 CrPC.

(l) The accused moved application under Section 233 CrPC dated 26 9 2013 in the trial court to send physical exhibit khukri abroad for re-examination.

(m) The trial court passed order dated 28-9-2013 dismissing the aforesaid application.

(n) The accused moved application under Section 233 CrPC dated 30 9 2013 in the trial court to file disclosure statements of Krishna, Vijay Mandal and Raj Kumar. Case adjourned to 1-10-2013 for objections and arguments on the application. The petitioners moved another application under Section 233 CrPC dated 30-9-2013 in the trial court for summoning witnesses of IOs of CBI, U.P. Police and private persons as defence witnesses. Case adjourned to 1-10-2013 for objections and arguments on the application.

(o) On 1-10-2013, the petitioners did not argue the applications and one lawyer informed the court that their counsel is ill and obtained adjournment.

[11] This Court in *Selvi J. Jayalalithaa v. State of Karnataka*[3] decided on 30-9-2013, after referring to its earlier judgments in *Triveniben v. State of Gujarat*[4], *Zahira Habibullah Sheikh (5) v. State of Gujarat*[5], *Amarinder Singh v. Parkash Singh Badal*[6], *Mohd. Hussain v. State (Govt. of NCT of Delhi)*[7] and *Natasha Singh v. CBI*[8], dealt with the issue of fair trial observing: (*Selvi J. Jayalalithaa*[3], SCC paras 28-30)

> 28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner.

3. (2014) 2 SCC 401
4. (1989) 1 SCC 678 : 1989 SCC (Cri) 248 : AIR 1989 SC 1335
5. (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8 : AIR 2006 SC 1367
6. (2009) 6 SCC 260 : (2009) 2 SCC (Cri) 971
7. (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919 : AIR 2012 SC 750
8. (2013) 5 SCC 741
3. *Selvi J. Jayalalithaa v. State of Karnataka*, (2014) 2 SCC 401

A Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes B harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

C

29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a D search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a *sine qua non* of Article 21 of the Constitution. Right to get a fair trial E is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution ...

30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article F 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights.

G **[12]** Thus, from the aforestated facts, it is evident that the petitioners have been adopting dilatory tactics on every moment. The impugned order was passed on 19-7-2013[1]. This petition was filed after about two months.

H **[13]** In view of the above, we are of the considered opinion that facts and circumstances of the case do not warrant any interference. The special leave petition is accordingly dismissed.

1. *Rajesh Talwar v. CBI*, Application No. 20215 of 2013 under Section I 482 CrPC, decided on 19 7-2013 (All)